

therein.

(c) Exception to Duty to Tender Defense. Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Franchisee and the County.

(d) The County may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this agreement.

9. Security Fund, Performance Bond and Letter of Credit.

(a) Amount. Within thirty days (30) of the County's execution of this Agreement, Franchisee shall establish and provide to the County a security fund, as security for the faithful performance by the Franchisee of certain material provisions of this Agreement. The security fund shall be in the amount of fifty thousand dollars (\$50,000) and will be in the form of an irrevocable letter of credit.

(b) Use. The County may draw on the Security Fund to ensure the Franchisee's faithful performance of and compliance with this Agreement, applicable law, and all orders and permits of the County. This may include, without limitation, if Franchisee fails to pay the County any fees or taxes due, liquidated damages, damages, costs or expenses incurred by the County by reason of any act or default of the Franchisee, or if Franchisee fails to comply with any provisions of this Franchise Agreement, applicable law or with any order or permit of the

County, which failure the County determines can be remedied by an expenditure from the Security Fund. The County shall notify the Franchisee of the amount and date of the withdrawal. The County shall comply with Section 6.27A.230 of the Cable Ordinance, as amended. Franchisee's recourse, in the event Franchisee believes any taking of security funds is improper shall be through legal action after the security has been drawn upon. If County's action or taking is found to be improper by any court or agency of competent jurisdiction, Franchisee shall be entitled to a refund of the funds plus interest and/or any other specific performance which such court or agency shall order.

(c) Restoration of Fund. Within thirty (30) calendar days after the County gives Franchisee written notice that an amount has been withdrawn from the Security Fund, the Franchisee must deposit a sum of money sufficient to restore the security fund to the original amount.

(d) Effect of Assessment Exhausting Fund. If the security fund is assessed by County for an amount exceeding Fifty Thousand Dollars (\$50,000) for violations relating to the Liquidated Damages provision of this Agreement, and Franchisee believes that such assessment is improper, County and Franchisee may mutually agree that the assessment shall be subject to binding arbitration, in accordance with the laws of the State of Washington. If either party does not agree to arbitration, either party may pursue any legal remedies otherwise available.

(e) Return of Fund. If the Franchise terminates for any

reason, and the Franchisee has ceased to provide service in the County, the balance of the Security Fund that remains following termination of the Franchise and satisfaction of all of its obligations which are secured by the Fund shall be returned to the Franchisee. Funds shall not be returned until the County has determined that the Franchisee does not owe funds to the County and is not in default.

(f) Performance Bond. Within thirty (30) days of the effective date of this Agreement, Franchisee shall post a performance bond in connection with its system upgrade or rebuild in the amount of eight hundred thousand dollars (\$800,000). Upon acceptance by the County of satisfactory completion of the upgrade or rebuild, the bond shall be reduced to one hundred thousand dollars (\$100,000). The bond shall be maintained at the one hundred thousand dollar (\$100,000) level throughout the term of this Agreement.

(g) Letter of Credit. Any letter of credit used to satisfy any portion of the Security Fund requirement must:

- (1) Be issued by a bank licensed to do and doing business in Washington State;
- (2) Be irrevocable;
- (3) Provide for automatic renewal of the letter unless the bank has given the Cable Office written notice by certified mail at least thirty (30) days prior to expiration of the letter;
- (4) Provide that the County may draw against the

letter for any reason and at any time prior to expiration of the letter;

(5) Provide that the County may draw against the letter and hold the funds in escrow after termination of the Franchise:

(i) If the County has filed an action;

(ii) If the County has issued a notice and order or sought to draw against the letter prior to termination and Franchisee has contested the action or appealed the notice and order; or

(iii) If the bank or the Franchisee has challenged or appealed the draw; and

(6) Be in a form acceptable to the County.

10. Liquidated Damages.

(a) Amounts. Because the Franchisee's failure to comply with provisions of the Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Franchisee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 1993 dollars and shall be increased periodically twenty (20) percent whenever a cumulative increase in the U.S. Consumer Price Index totals twenty (20) percent.

(1) For failure to complete construction in accordance

with the Franchise : \$1/day for each affected subscriber for each day the violation continues;

(2) For failure to extend a service line as required: \$ 1.50/day for each affected subscriber for each day the violation continues;

(3) For failure to provide any transmission pathway or capability for public, educational, and governmental use of the System required in this franchise: \$50 for each violation for each day the violation continues;

(4) Except as provided in (5) - (6) below, for violation of applicable customer service standards: \$50 per violation per affected subscriber;

(5) For failure to maintain a local office: \$200 per subscriber per month;

(6) For violating any performance standard where, after receiving a consumer complaint or notice from the Cable Office and an initial reasonable opportunity to cure, the Franchisee fails to meet such performance standard, which affects the lesser of ten (10) percent of the subscribers served from the same fiber optic node or fifty (50) subscribers on the same distribution line simultaneously: \$2,000 per violation; if the Franchisee later violates the same standard, \$4,000 for the second violation, \$6,000 for the third, and \$10,000 for the fourth and each subsequent violation during the term of this Agreement.

(7) For failure to comply with Section 12(c), as

provided in that Section; and

(8) For all other material violations of this Agreement for which actual damages may not be ascertainable: \$1/day for each affected subscriber for each violation for each day the violation continues after receiving a consumer complaint or notice from the Cable Office and an initial reasonable opportunity to cure.

(b) Effect on Duty to Comply. The collection of liquidated damages by the County shall in no respect affect:

(1) Compensation owed to subscribers; or

(2) The Franchisee's obligation to comply with the provisions of this Agreement or applicable law.

(c) Accrual. Liquidated damages accrue from the later of the date the violation occurs or the date the Franchisee establishes it had actual or constructive knowledge of the violation, and not from the date the County determines there has been a violation.

11. Relationship of Remedies.

(a) Remedies are Non-exclusive. The remedies provided for in this Agreement and the Cable Ordinance are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the County at law or equity, provided however, cumulative remedies may not exceed the total wrong involved.

(b) No Election of Remedies. Without limitation, the

withdrawal of amounts from the Security Fund, or the recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Agreement shall not be construed as the following: an election of remedies; a limit on the liability of the Franchisee under the Franchise for damages or otherwise; or to excuse faithful performance by the Franchisee.

12. Non-discrimination.

(a) No Discrimination.

(1) The Franchisee must comply with all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination in the provision of cable service or employment.

(2) The Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a person to waive such rights as a condition of taking service.

(3) The Franchisee is specifically prohibited from denying access or levying different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) To the extent the County may enforce such a

requirement, the Franchisee is specifically prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers. The Franchisee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the County; and the Franchisee shall offer special discounted rates for the basic and other regulated service tiers to economically disadvantaged subscribers who receive federal SSI assistance, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.

(5) The Franchisee may request in writing, and the County may grant, temporary authority to the Franchisee for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services to selected groups of subscribers at terms and conditions not generally available to all subscribers. The County may refuse to grant this waiver unless it is persuaded upon sufficient showing by the Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all subscribers in a uniform, consistent and nondiscriminatory manner.

(b) Equal Employment Plan. The Franchisee must adopt and follow an equal employment opportunity plan that complies with all applicable provisions of federal, state and local laws and regulations (which requirement includes the obligation to amend that plan to bring it into compliance with those laws and regulations, as hereafter amended or interpreted). A plan must be submitted to the County on the effective date of the Franchise for the County's review and approval.

(c) Minority/Women's Business Procurement Program.

(1) The provisions of K.C.C. Section 4.18, as it may be amended from time to time, are incorporated by reference as if fully set forth herein.

(2) The Franchisee shall:

(i) Develop and apply a minority/women's business procurement plan that satisfies the requirements of this Section 12 as well as the requirements of K.C.C. Section 4.18. A proposed plan must be submitted for approval to the Office of Civil Rights Compliance ("OCRC") within thirty (30) days of the effective date of the Franchise, which plan shall be effective immediately upon approval by the OCRC. The OCRC may exercise any remedies it may exercise under K.C.C. Section 4.18 if the Franchisee fails to submit an appropriate plan; in addition, the County may exercise any other remedies it has under this Agreement or applicable law.

(ii) Any purchases undertaken for the Cable System prior to the approval of the OCRC plan are subject to the

requirements of K.C.C. Section 4.18.

(3) The purpose of the County's minority/women's business ordinance is to provide a prompt remedy for the effects of past discrimination. The County in general, and this program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women's business is not actually performed by a minority/women's business enterprise in compliance with K.C.C. Section 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the following fairly estimate the amount required to compensate the County for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation:

(i) The dollar value of the minority/women's business utilization contemplated in the Franchisee's approved minority/women's business utilization plan; or

(ii) If the Franchisee, by virtue of a failure to submit an appropriate plan, has been found to have violated K.C.C. Section 4.18 in accordance with the procedures set forth in that section, ten (10) per cent of the total value of the contracts subject to this Section that are let in the year the violation occurs.

(d) Annual reports. In addition to its other obligations

submit an annual report to the Office of Civil Rights and Compliance listing: all purchases during the preceding year made by it or by others for it or on its behalf; the amounts of such purchases; and the persons from whom such purchases were made, including whether each person is a minority and/or women's business enterprise. The report also shall include projections for purchases to be made over the next year, and a description of how the Franchisee plans to comply with the requirements of this Section 12 over the next year. The first report must be submitted within thirty (30) days of the effective date of the Franchise, showing purchases made for calendar 1993 and actual purchases (to the extent that information is available), purchase projections and purchase plans for calendar 1994. The annual report shall be filed on February 1 of each succeeding year.

13. Rates.

(a) Rates and Charges Regulated. The County may regulate the Franchisee's rates and charges except to the extent it is prohibited from doing so by applicable law. The term "regulate" means the County may take any step it is not prohibited from taking under applicable law in order to protect the public from unreasonable or discriminatory rates and charges, including but not limited to ordering refunds for overcharges and adopting regulations as appropriate to further implement its authority to regulate rates.

(b) Manner of Regulation. Without limiting the foregoing.

and except as inconsistent with applicable law:

(1) The County may require the Franchisee to submit to the County for review and approval the rates in effect on the date the Franchise issued.

(2) The Franchisee may not change a rate or charge that is subject to the County's regulation without the County's prior approval, except as federal law otherwise provides.

(c) Rate Schedules. The Franchisee must provide a complete list of all its rates and charges (including bulk rates and charges and unregulated rates and charges) to the Cable Office on the effective date of the Franchise. The Franchisee must update that list so that the schedule of rates and charges is current. The Franchisee must give a minimum of thirty (30) calendar days prior notice before changing any rate or charge.

13(d). Experimental Services. Subject to Section 12(a)(5), the Franchisee may conduct experimental services and service offerings to particular regions of the County without making the service generally available throughout the County. The Franchisee must pay franchise fees on any revenues received.

14. Customer service.

The Franchisee shall meet or exceed any customer service standards adopted by the Federal Communications Commission, and, to the extent the same are stricter or address different matters, the customer service standards set forth in the Cable Ordinance. Nothing in this Agreement limits any rights the County may have

under 47 U.S.C. § 552.

15. System Facilities, Equipment and Services.

(a) System Upgrade. The Franchisee's Cable System shall be upgraded within four (4) years of the effective date of this Agreement so that, at all times thereafter, the System meets or exceeds the following requirements:

(1) The System shall have a rating of at least 750 MHz on all active components and at least 1 GHz for all passive components, and shall be activated for and carry at least 70 6-Mhz analog channels, downstream to all Subscribers.

(2) The rebuilt system will have at least eight (8) optical fibers to each node. Additional fibers will be provided at certain nodes based on County Institutional Network and Franchisee subscriber system designs. No node will serve distribution cable which passes more than 1000 homes or serve more than 700 subscribers. The system will have the capability of reaching nodes of 250 homes each.

(3) There shall be no more than eight (8) active components in a cascade beyond any node and no more than ten (10) active components in a cascade measured from the headend.

(4) Each fiber optic node shall be located and designed to allow adequate space for several fiber receivers and transmitters, and standby power.

(5) The System shall be capable of continuous twenty-four (24) hour daily operation without severe material

degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(6) The System shall be capable of operating over an outdoor temperature range of -20 degrees F to +120 degrees F and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.

(7) The System shall meet all specifications as set forth herein or in the Ordinance over an outdoor temperature range of 0 degrees F to 100 degrees F and over variation in supply voltages from 105 to 130 volts AC.

(8) The System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber.

(9) The upstream capacity of the System shall be such that there is no significant deterioration in the signal quality from the point of origin through the headend; and so that from the headend, there is no more deterioration in the signal quality on PEG channels than on any other channel. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(10) The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The System including headend, distributive network, and customer premises equipment shall be an "open" network. The Franchisee must take affirmative steps, including in its design, research,

procurement and contracting practices so that the System operates as an "open" network as far as reasonably possible initially and so that openness is maintained and enhanced throughout the franchise term. An "open" system shall have at least the following characteristics:

(i) the standards for the hardware interfaces and software protocols used by the system, other than those required to maintain network integrity and security, the protection of copyrighted information or those protocols utilized to bill users of the network for network usage - including at the node, headend and at customer premises - shall be published and generally available;

(ii) the system shall be transparent as possible (that is, once a user has access to a transmission path, the user should not require the operator's cooperation to bring in or transmit particular applications), unless there is a particular time and usage fee associated with that access; and

(iii) the Franchisee shall offer customer premises equipment that has outlets or other connections which provide a user full access to the equipment functions (other than those functions which would compromise the security or transmission of information the user is not authorized to receive); among other things, this access shall allow the user to write to the equipment's central processing unit if the particular customer premise equipment is intended to be utilized in this manner. This does not require the Franchisee to provide

all elements of the "open network" in its system as of the date the system upgrade is completed. However, the openness of the network should be enhanced over time. The System should be designed so that the County and other users can where reasonably possible (physically or virtually) "collocate" facilities or equipment at the Cable System's headends and control centers.

(iv) Consistent with the obligations in this Section 15(a)(10), the Franchisee will make publicly available all operational protocols and electronic standards necessary to allow third parties to plan and implement interconnection with the Franchisee's cable system. The prior sentence does not obligate Franchisee to release information that would facilitate signal theft or piracy. The Franchisee may establish reasonable charges for interconnection services provided to users other than qualified public, educational or governmental access users. Nothing in this requirement is intended to make the Franchisee a common carrier. However, the Franchisee has an obligation to reasonably mitigate the expense and inconvenience to third parties seeking to use and connect to all or any part of the Cable System's facilities.

(11) The System must have back-up power supplies capable of providing power to the System for three hours in the event of an electrical outage. The obligation to provide back-up power supplies requires Franchisee to provide back-up power supplies at each fiber optic node and at the headend. In addition, the design and construction of the System shall include

modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the System shall include components so that a signal received at the headend in color may be received by the subscriber in color, and a stereo signal in stereo).

(12) The master headend shall be capable of providing at least 120-plus channels in full configuration and shall develop signals of high quality throughout the service area (including on channels retransmitting upstream signals received through the headend), and the headend shall have adequate ventilation and space to be able to meet or exceed applicable design and technical requirements and in order to reasonably accommodate equipment for the County

(13) The System shall allow all unscrambled analog channels on all Service Tiers to be received by cable-ready television sets without the aid of a converter, and shall minimize, to the maximum extent feasible, interference with consumer electronic equipment. Franchisee may choose to trap signals not authorized for reception

(14) As part of the System, the Franchisee shall offer every Subscriber, at the same price and regardless of the level of service taken, the opportunity to lease or buy converters that utilize wireless remote controls and that contain bypass or similar technologies that allow Subscribers to view a program on one channel while taping a program on another channel.

(15) Subscribers must be able to block out all premium and pay-per-view channels, and video on all channels.

(16) The System shall include equipment so that pay-per-view programming can only be activated by authorized subscribers.

(17) The Franchisee shall design the system so that channel capacity may be readily expanded through digital video compression or similar appropriate technology without compromising service quality or requiring significant alterations, upgrading or reconstruction.

(18) The Franchisee shall make available to all existing one-way converter subscribers interactive technology within four (4) years of the effective date of the Franchise.

(19) The rebuilt subscriber network will be two-way active on completion of the rebuild. Final tuning and sweeping of the upstream system will not occur until Franchisee chooses to provide a specific two-way service. The County may waive this requirement of two-way activation upon a showing by Franchisee that two-way services are commercially impracticable. In the event that the County waives the requirement, the waiver shall apply for one calendar year only, and a new showing must be made each year or the requirement must be met.

(20) All closed-caption programming retransmitted by the System shall include the closed caption signal. It shall provide a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household

is mobility limited. For hearing impaired customers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Franchisee must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

(21) Except as provided in this paragraph, all County subscribers will be served with the same technology and the same services.

(i) The area of South King County served from the Tacoma headend as of January 1, 1994 will be integrated into the rest of the system by the completion of the rebuild and will have available the same set of public, educational and governmental services described in Sections 15 and 16. Prior to completion of rebuild, the Franchisee shall make best efforts to provide the same set of public, educational and governmental services as available in the rest of Franchisee's territory, provided the capital costs of such provision do not exceed \$300,000.

(ii) Vashon Island will be served in the same manner and with the same technology as the other parts of Franchisee's King County system. The County may waive the requirement for a two-way return from Vashon Island to the headend upon a showing by Franchisee that it is commercially

impracticable. In the event the County waives the requirement, that waiver shall apply for one calendar year only, and a new showing must be made each year or the requirement must be met.

(22) Status Monitoring. Franchisee shall provide system status monitoring upon completion of the rebuild and after the Cable System becomes two-way active pursuant to Section 15(a)(19) in accordance with a plan presented to and approved by the Cable Office. At minimum, the plan shall include equipment to monitor the health of the fiber optic receive sites at rebuild and to monitor other fiber and fiber sites as that equipment becomes reasonably available.

(b) Institutional Network.

(1) The County will build an Institutional Network physically and electrically related to the cable subscriber network. Franchisee agrees to cooperate with the County in the design coordination of the two networks. Franchisee will assist in the construction of the Institutional Network as specified in the Construction Agreement between the parties, dated _____, 1995 ("Construction Agreement"). And Franchisee will cooperate in the operation of the Institutional Network as specified in this franchise. The Franchisee agrees to construct for the County under the terms specified in the Construction Agreement optical fibers with a minimum design transmission capacity and to be located as specified by the County. These fibers and all related transmission equipment will be the property of the County and will be used by the County to link

public, educational and governmental facilities in the County and shall be for use by public, educational and governmental users (the "Institutional Network" or "Network"). This capacity shall be activated after completion of construction at a time designated by the County and shall be in addition to the engineered capacity required by Section 15(a)(1). The Franchisee shall cooperate with the County in Subscriber Network node locations and in the design, operation and maintenance of the Institutional Network. Any transmission on the Institutional Network may be simultaneously retransmitted on the downstream public, educational and governmental ("PEG") channels reserved under Section 16.

(2) The cost of construction, maintenance, repair and replacement of the facilities referred to in Section 15(b)(1) shall be allocated in accordance with the Construction Agreement dated _____, 1995.

(3) The Franchisee shall provide reasonable space at the headend for switching equipment required for the utilization of the system capacity reserved for the Institutional Network.

(4) The Franchisee, as directed by work order pursuant to the Construction Agreement, shall connect to the Institutional Network such schools, libraries, courts, County offices and agencies, and such other public, educational and governmental facilities as shall be designated by the County from time to time.

(5) Interconnection of the Institutional Network and

the Subscriber Network shall be provided as reasonably requested by the County. Such interconnection shall be activated immediately upon the request of the County, as the County deems use of the interconnection to be necessary to its public, educational and governmental communications needs and interests. The Franchisee shall not be responsible for providing and operating any switching capability the County uses.

(6) If the County wishes to use transmission capacity on the Franchisee's Cable System beyond its rights to free use under this Agreement, the charges for such use shall be freely negotiated on terms and conditions equal to or more favorable to the County than those offered to any other major user by the Franchisee.

(c) Interim System Upgrade.

(1) The Franchisee shall complete an interim upgrade of its existing system to 450 MHz, with 54 programmed analog channels not later than January 1, 1995. If, through no fault of the Franchisee, any government agency delays necessary approvals such that Franchisee cannot complete the interim upgrade by this date, Franchisee may, after notice to the County, delay completion of the interim upgrade until March 31, 1995.

(d) System Upgrade and Institutional Network Schedule.

(1) The Franchisee shall begin construction of its proposed rebuilt system within two (2) years of the effective date of the Franchise and shall complete all construction within forty-eight (48) months of the effective date of the Franchise.

(2) The Franchisee shall construct so that service from each hub is extended to nodes in low income areas at least as quickly as it is extended to nodes in higher income areas.

(3) Following the commencement of construction of the System rebuild until the upgraded System is completed, the Franchisee shall provide detailed written reports to the County on the Franchisee's progress in constructing the rebuilt System at each point construction passes seven thousand (7000) additional homes and shall meet with the County to discuss such progress.

(4) Testing Requirements. The County has the right to conduct tests and to observe when Franchisee conducts tests, as consistent with federal law. The Franchisee shall perform all tests necessary to demonstrate compliance with the performance standards of a fully activated system it must satisfy under its Franchise Agreement or applicable law. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems," or if no recent edition exists, such other appropriate manual as the parties may designate. The Franchisee shall perform at least the following tests:

(i) The Franchisee shall assure that preactivation quality control is performed on cable and equipment. In the case of passive components, this will include testing to verify compliance with manufacturer's specifications.

All trunk and distribution cable shall be inspected and sample tested to verify compliance with manufacturer's specifications for frequency response and structural loss. All trunk and distribution amplifiers shall be bench-tested. No component should be used in system which fails to meet manufacturer's specifications. The manufacturer's specifications should meet or exceed industry standards.

(ii) The Franchisee shall perform acceptance tests on each construction area segment prior to subscriber connection. The tests should demonstrate that the system components are operating as expected. The Franchisee shall have the obligation, without further notice from County, to take corrective action if any segment is not operating as expected.

(iii) The Franchisee and the County will jointly select appropriate locations given the System design to install equipment to establish permanent test points. The test points shall be installed in locked enclosures so as to be accessible from ground level. The number of required test points may be specified by agreement of the parties, consistent with FCC rules and regulations, as appropriate to ensure all subscribers are receiving adequate service. The Franchisee shall perform proof of performance tests at these locations at least once every six months through life of franchise except as federal law otherwise limits the obligation; or more frequently if federal law so requires. If a location fails to meet applicable performance specifications, the Franchisee, without requirement

of additional notice or request from County, shall take corrective action, retest the locations and advise the County of the action taken and results achieved.

(iv) If based on subscriber complaints, or based on its own investigation, the County believes that the System may not be operating in compliance with the Franchise Agreement or applicable law, it may require the Franchisee to perform tests, and to prepare a report to the County on the results of those tests, including a report identifying any problem found and steps taken to correct the problem.

(v) The Franchisee shall notify the County at least one week in advance of any of the tests described above, except the County shall receive thirty (30) days advance notice of proof of performance tests required by Section 15(f). The County shall have the option of witnessing the tests. Written test results should be submitted to the County within thirty (30) days of completion of the testing

(vi) Consistent with Section 15(d)(4), the County may conduct inspections and test the System, after notice to Franchisee. Franchisee may observe the tests conducted by the County, to assure the County's actions do not damage the system, provided, however, Franchisee may not in any way obstruct the conduct of the tests by the County. Tests and inspections may include determining whether the System is being constructed in accordance with the system construction plan. Inspection does not relieve the Franchisee of its obligation to comply with all